

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

STATE OF ARIZONA, ET AL,) CIVIL ACTION NO. 6:22-cv-1130
) AND RELATED CASE 6:23-cv-420
Plaintiffs,)
)
vs.) JUDGE JOSEPH
)
MERRICK GARLAND IN HIS)
OFFICIAL CAPACITY AS ACTING)
DIRECTOR OF EXECUTIVE OFFICE)
FOR IMMIGRATION REVIEW, ET AL)
)
Defendants.) MAGISTRATE JUDGE WHITEHURST

MOTIONS HEARING

Transcript of Proceedings before The Honorable
David C. Joseph, United States District Judge,
Lafayette, Lafayette Parish, Louisiana, commencing
on April 4, 2023.

Appearances of Counsel:

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1 (Lafayette, Lafayette Parish, Louisiana; April 4, 2023,
2 in open court.)

3 (Call to order of the court.)

4 THE COURT: Please be seated. Okay. We're on the
5 record now in 22-cv-1130, Arizona versus Garland, as well as a
6 related case, 23-cv-420, which was transferred in a few days ago
7 from the Northern District of Georgia. We have several motions
8 to quash nonparty subpoenas. Who do we have here today?

9 Make sure everybody stands by a microphone or else
10 we're all going to get in trouble.

11 MR. QUIGLEY: Bill Quigley, Your Honor, on behalf of
12 Home is Here, Louisiana Advocates for Immigration and Detention,
13 and Immigration Services and Legal Advocacy. I'm at Loyola in
14 New Orleans, and we have with us, Julia Long, Stephanie Teplin,
15 and Jessica Vosburgh all part of the pro bono team for these
16 targets of the subpoena.

17 THE COURT: Okay. Thank you, Mr. Quigley.

18 And I see Mr. McLindon back there. You represent the
19 Rozas Law Firm, correct?

20 MR. McLINDON: Yes, sir.

21 THE COURT: How are you this morning?

22 MR. McLINDON: I'm great, Your Honor.

23 THE COURT: All right. Who else do we have?

24 MR. VOGEL: Good morning, Your Honor. My name is
25 Matthew Vogel. I'm with the National Immigration Project. I

1 represent Innovation Law Lab which is the movant that was in the
2 case transferred from Georgia, case 420.

3 THE COURT: I think, Christina, you told me maybe
4 there's an issue with his admission?

5 Have you -- Are you admitted pro hac vice?

6 MR. VOGEL: No, Your Honor, I'm a member of the bar
7 here, and I entered -- I think what happened was, there was an
8 improper filing. I think it's been corrected this morning, but I
9 don't think it's been acted on. There is a motion to substitute
10 counsel.

11 THE COURT: Okay. That motion is granted.

12 MR. VOGEL: Thank you, Your Honor.

13 THE COURT: You're in. All right. Thank you.

14 And is that all we have for the movants today? All
15 right.

16 And on behalf of the plaintiffs?

17 MR. ST. JOHN: Good morning, Your Honor, Scott St.
18 John, Deputy Solicitor for the plaintiff states. I'm joined by
19 my colleagues, Assistant Solicitor Jordan Redmon.

20 THE COURT: Okay. Good morning, gentlemen. Before we
21 get into that, Mr. St. John, do we have anybody on behalf of the
22 defendants?

23 MR. ST. JOHN: Your Honor, when I spoke with Mr. Ward,
24 I spoke with him last week, he indicated the federal defendants
25 were not sending anyone to this hearing.

1 THE COURT: Okay. All right. I received this morning,
2 Mr. St. John, a motion to compel. Do you have a position whether
3 or not the Court's ruling on that motion to compel may affect
4 what we're doing here today?

5 MR. ST. JOHN: It may, Your Honor. The issue is that
6 ultimately the federal defendants have made clear in the Florida
7 case and in this case that they expect granular proof of
8 standing. We disagree that's the standard, but that's the
9 position the federal defendants have taken.

10 In all fairness, the Court has to give us the discovery
11 from either the federal defendants or the nonparties. So, you
12 know, you can resolve it one way or the other; but in fairness,
13 if we're going to be expected to -- if the federal defendants'
14 position is that we need to prove standing at that level, we're
15 entitled to discovery from someone.

16 The Fifth Circuit has made clear that, if we can't get
17 it from the feds, we can look to private parties. So really in
18 some sense the dispute is between the federal defendants and the
19 third parties as to who should produce the discovery.

20 THE COURT: Right, and Mr. St. John, you say several
21 times in your response to the motions to quash that essentially
22 you don't believe jurisdictional discovery is necessary to move
23 forward, and I don't want to discuss that too much because it
24 obviously involves the defendants, and they may have a position
25 on that, but I do want to discuss with you and with the

1 defendants whether -- I mean, ultimately the plaintiffs have the
2 burden to prove standing.

3 MR. ST. JOHN: I agree with that, Your Honor.

4 THE COURT: It may not be much, but ultimately
5 someone's got the burden of proof, and it's your client. So if,
6 you know, if the plaintiff states don't believe any more
7 discovery is necessary, they believe standing, can be shown in
8 other ways, then we can just end this and we can just brief it
9 and I'll decide, because I'm the one that's going to decide --
10 this was initiated because I want to move forward with standing
11 before we move forward with the merits of the case. That's my
12 decision, and the courts have constant obligation to look at
13 whether they have jurisdiction, and I decided at the outset of
14 this case, that's something I'm going to do. So we can discuss
15 that with -- maybe I'll -- I'll set up a status conference with
16 the defendants so we can discuss that in detail whether we want
17 to do that.

18 MR. ST. JOHN: Yes, Your Honor.

19 THE COURT: But I do want to discuss that because I
20 think it's important. Especially I had a chance this morning to
21 look at -- I haven't finished your motion to compel, but I had a
22 chance to start looking at some of it, and I'm aware of some of
23 the issues.

24 So given that motion to compel, would your clients have
25 any objection to defer any ruling today on these motions to quash

1 until I rule on that?

2 MR. ST. JOHN: I think that's probably the correct
3 answer at least for request number one on the motion to quash.
4 Some of the smaller requests may be correctly ripe. They are
5 secondary indicia of the presence of asylum applicants who would
6 be a burden on the state. Those are probably ripe.

7 If the nonprofits are handing out, here's how you get
8 benefits, okay, that's a pretty good indicia that some of these
9 folks are indeed partaking of state benefits. So that part is
10 ripe. The part that's really being fought over is request number
11 one which is --

12 THE COURT: Identity of the clients and the individuals
13 they are servicing.

14 MR. ST. JOHN: Correct, Your Honor, and that's the one
15 where the federal defendants and the nonprofits and Mr. Rozas are
16 at kind of cross points as to who is obligated to produce that.

17 THE COURT: Okay. I think, John, I think you filed
18 your motion first. Do you want to start, and we can, I think,
19 tailor it to just that issue. I guess with respect to your
20 client it would have to do with claims of some kind of work
21 product or something like that, right?

22 MR. McLINDON: I'm sorry, with what?

23 THE COURT: Work product.

24 MR. McLINDON: Sure. It's more attorney-client
25 privilege, but I would like to start off by saying I think Your

1 Honor is right, that I think a motion to compel should be decided
2 first, because I don't think they even disagree with us that the
3 case law is, if you can get it from somewhere else, go get it.

4 Don't come to --

5 THE COURT: Yeah, we're not getting into that. I think
6 the only, the only remaining issue is some of these, I think how
7 Mr. St. John characterized it was tangential requests for
8 documents advising asylum applicants or maybe other illegal
9 immigrants who have not applied yet for asylum how to operate.
10 Okay? So what's your position with respect to that?

11 MR. McLINDON: Well, if I could, I'd like to talk about
12 the burden that it puts on the Rozas firm, if that's where you're
13 going with this. So, again, what makes us different from
14 everyone else is we're a -- David Rozas is here, Your Honor, is a
15 private law firm, and he does a lot of immigration work, and he's
16 actually missing a sentencing in front of Brian Jackson right now
17 to be here. He's paying me to be here. And if this subpoena is
18 granted, it's going to cost him thousands and thousands of
19 dollars to try and find this information. He's going to have to
20 take his staff off of what they are doing and get onto this, and
21 that's not fair.

22 THE COURT: And there's, for third-party discovery,
23 there's -- you can push that onto the people asking for the
24 information, right?

25 MR. McLINDON: Yeah, for costs.

1 THE COURT: For cost.

2 MR. McLINDON: That's something we would like to
3 explore.

4 THE COURT: Yeah.

5 MR. McLINDON: But burden is not only financial burden.
6 It's other burdens, and this is a big one to somebody who is in
7 private practice, and I will tell you, Judge, word is already on
8 the street in Baton Rouge that David Rozas has got a subpoena. I
9 don't know how it got out there, but the other immigration
10 lawyers in Baton Rouge are saying, hey, what's going on with
11 Rozas. I heard he got subpoenaed.

12 If he is ordered to turn these names over, it's going
13 to spread like wildfire among the other immigration lawyers, and
14 you can imagine the scenario, Judge. I'm looking for --

15 THE COURT: We're not turning the names over today.
16 We're not doing that today. I'm deferring any client list from
17 any of these organizations. We're not doing that.

18 Now down the road, if it's absolutely necessary and
19 they can't be obtained from party discovery, we will start anew
20 on that, and you'll have a chance to argue this point, but we're
21 not doing that today.

22 MR. McLINDON: Is there any other issue you wanted me
23 to address then?

24 THE COURT: Just the ancillary documents, as
25 Mr. St. John calls them, about --

1 MR. McLINDON: Public benefits and things like that?

2 THE COURT: Yeah, maybe flyers or --

3 MR. McLINDON: The answer is we don't do that. Rozas
4 doesn't do that. He doesn't give those documents out. He
5 doesn't give them -- he has no idea -- Any client that he
6 represents in an asylum case, whether they are going to get
7 public benefits or not, he has nothing to do with that. So they
8 are nonexistent. So really don't even need the motion to quash
9 on that. The answer is, no, we don't have them and never have
10 had them.

11 THE COURT: So the big issue for you is the names of
12 the clients serviced by Rozas Law Firm?

13 MR. McLINDON: Yes. It's not that easy to find those
14 names. I mean, it's not like -- Like if someone would ask me,
15 John, give me the names of your clients that did -- convicted
16 felon in possession of a firearm. I don't have it like that.
17 I'd have to go through every file. I don't put that like that.

18 THE COURT: How many of those cases do you do, John?
19 Do you do a lot of 922's?

20 MR. McLINDON: I do, Your Honor. I do quite a lot.

21 THE COURT: All right.

22 MR. McLINDON: Most of my practice is federal criminal
23 defense, so.

24 THE COURT: I didn't know if you did any gun cases
25 though.

1 MR. McLINDON: In other words, it would take a lot of
2 work. And Mr. Rozas' firm is a lot bigger than mine. The burden
3 would be unbelievable.

4 THE COURT: Well, we will certainly have a chance to
5 address that if we get there; but, again, I think we have --

6 MR. McLINDON: But the documents, never have, have no
7 idea about that. Whether they go get public benefits or not,
8 that's beyond the scope of our representation.

9 THE COURT: Okay. All right, thank you, Mr. St. John.
10 Okay. So --

11 MR. QUIGLEY: Your Honor, Ms. Long is going to address
12 the Court.

13 THE COURT: Okay, Ms. Long please proceed.

14 MS. LONG: Good morning, Your Honor. Julia Long from
15 Patterson, Belknap, Webb & Tyler, pro bono counsel for our
16 clients, the nonprofit organizations. Your Honor, I know you've
17 already said you don't want to address Request Number 1, but if I
18 could just make one point that I think is clear, particularly,
19 from the State's motion to compel, the State of Louisiana is
20 effectively asking our clients, three very small nonprofit
21 organizations, to carry the burden of jurisdictional discovery in
22 this case. That's inappropriate. It's inconsistent with the
23 Federal Rules of Civil Procedure, and as Ms. Vosburgh will argue,
24 it's also inconsistent with core constitutional principles.

25 Diving into the remaining requests, certainly we have

1 objections to Request 1. I think that's clear on the record.
2 There is no need for this information, but there is also no
3 relevance. We have said on Request Number 2, which is the
4 information on how to seek public benefits, we said in our
5 initial meet-and-confer and our objections letter that our
6 clients simply don't have this information. The state has made
7 that a big point.

8 THE COURT: You don't need me to do anything. You can
9 just respond to the state subpoena saying "no responsive
10 documents."

11 MS. LONG: We have, Your Honor. We put that in our
12 objection letter.

13 THE COURT: So I don't need to quash anything.

14 MS. LONG: So setting that aside, I think that leaves
15 us with Requests 3, 4, and 5. Request Number 3 is particularly
16 burdensome. If I could just make a point on that. It seeks all
17 information about the Notice of Proposed Rulemaking. That goes
18 back five years in time.

19 If I could just give the Court some insight into our
20 clients. Home is Here New Orleans is a three-person
21 organization. They don't have an IT manager. They don't have
22 the staff to deal with this, and they've estimated that this
23 would take an incredible amount of time to compile, and it's not
24 clear from the subpoena itself whether this would include
25 publicly available documents. That request is simply overbroad

1 as written, and frankly, we don't see the relevance to the
2 state's standing inquiry.

3 For our other clients, La. AID, again, a three-person
4 organization. They don't have a centralized document management
5 system. La. AID has specifically has an incredible network of
6 volunteers. They would have to go back and ask their volunteer
7 network to turn over hard copy, text message communication, all
8 responsive documents that they have. This is an incredible
9 burden.

10 ISLA is in a slightly different boat. As a legal
11 services provider, they do have a client management system of
12 some kind, but as my colleague will argue, they have significant
13 privilege concerns, and as you've already heard today, that would
14 be an additional burden. The state doesn't address this burden
15 in its brief, and we think it would be an alternate basis to
16 conclude that the subpoena should be quashed.

17 Your Honor, I would also just point out, I know that
18 the Court has indicated that on Request Number 1 specifically
19 that the Court may defer that ruling, and I think our clients
20 would be open to that. But the record is also sufficient to rule
21 now. We don't see the relevance to this information.

22 The state has advanced a couple of theories of
23 standing. One is an aggregate data model. Certainly our clients
24 don't have information about aggregate immigration data. On the
25 states extra theory -- extra dollar of spend theory, there's

1 nothing in the request that tailor any of this information,
2 certainly on the identities of clients to the Notice of Proposed
3 Rulemaking, the final rule.

4 So even if there's an extra dollar of spend, the state
5 has done nothing to try and tailor that to show attribution again
6 to that rule.

7 And third, if standing is proven as a matter of law,
8 certainly our clients don't need to be burdened either on Request
9 1 or the remaining requests.

10 THE COURT: Thank you, Ms. Long.

11 MS. VOSBURGH: Good morning, Judge. Jessica Vosburgh
12 also for the nonprofit organizations. If I can just address
13 briefly the privilege and constitutional issues, which also come
14 into the Court's consideration of the burden. I wanted to touch
15 on these issues briefly, but also know as the Fifth Circuit
16 recently held in Whole Woman's Health, these sort of weighty
17 constitutional and privilege issues, the Court doesn't ultimately
18 need to rule on those grounds, but should take careful
19 consideration of them in assessing the severe burden on our
20 clients.

21 So these subpoenas, and I think centrally Request
22 Number 1, but the subpoenas in their entirety and also Request
23 Numbers 2 through 5 burden our clients core associational rights.
24 As the codirector of Home is Here explained in her declaration,
25 their work is centered on sustaining relationships, building new

1 ones, and establishing trust across partner organizations in
2 Louisiana. Complying with these subpoenas, handing over this
3 sensitive internal information to the state would lead to
4 devastating relational consequences, causing their network of
5 partners to collapse and severely weakening their ability to
6 advocate and would have ripple effects that would put their
7 partners --

8 THE COURT: You got to slow down a little bit.

9 MS. VOSBURGH: The ripple effects, and this is quoting
10 the director of Home is Here, (reading:) would put our partners
11 in fear of retribution, harassment, and abuse from both
12 government actors and from private vigilantes.

13 The same goes for Louisiana Advocates for Immigrants in
14 Detention who depend on an extensive network of largely
15 faith-based volunteers and the trust of the individuals to whom
16 they provide temporary shelter.

17 And also to ISLA where the associational interests are
18 primarily with their current, former, and prospective clients,
19 something that the Supreme Court has long recognized since NAACP
20 v Button and In re Primus in the '60s and '70s is a protected
21 associational right, as well as their relationships with their
22 broader community, client families, and partner organizations.
23 Complying with these subpoenas would threaten those core
24 associational rights.

25 In addition as Mr. McLindon has raised with respect to

1 the Rozas Law Firm, attorney-client privilege applies with
2 respect to immigration services and legal advocates. Much of the
3 information sought -- and not just with respect to number one,
4 although we agree that's by far the most concerning, implicates
5 both the privilege and work-product doctrine, as well as the
6 general duty of confidentiality under the state's ethics rules.
7 Turning over this information is going to violate those
8 privileges, and I would note that Rule 45(d)(3) sweeps broader
9 than just the strict application of attorney-client privilege,
10 but also applies to other protected matters.

11 And so taking all those into account and also, again,
12 assessing the immense burden, both in terms of time, resources,
13 and threat to these organizations' mission and their reputation,
14 that this Court quash the subpoenas in their entirety.

15 THE COURT: Thank you, Ms. Vosburgh.

16 All right. And then we have Mr. Vogel.

17 MR. VOGEL: Yes, Your Honor.

18 THE COURT: Did they leave anything on the table for
19 you?

20 MR. VOGEL: Well, I have a couple of issues.

21 THE COURT: Get up here.

22 MR. VOGEL: Thank you, Judge. And thank you for
23 allowing us -- allowing me to speak today. You know, I didn't
24 have a whole lot of notice, but I am here.

25 THE COURT: Yeah, the judge in Georgia gave you notice

1 that we were transferring it for the purpose of this hearing, so
2 you did have some notice.

3 MR. VOGEL: I think I would add to what the other
4 counsel said. I certainly echo what counsel said about the
5 privilege issues, the work-product issues, the ethical
6 considerations. Law Lab is a legal services organization. It
7 provides -- as is outlined in our submissions, it provides legal
8 services to people. Excuse me. And so I think that, you know,
9 those are all very weighty issues. And like counsel said, these
10 also apply to the other requests, as well, not just the first
11 one.

12 Law Lab's subpoena is a little bit different, but still
13 the first request seeks identities, and we too agree that that is
14 the most significant one with respect to the questions of
15 privilege and work product, but also the other requests, you
16 know, Request 2 seeks documents used in asylum workshops.
17 Request 3 seeks other materials and documents used across Law
18 Lab's other programs. And you know, Law Lab has produced in our
19 declaration, in Steve Manning's declaration, did produce a number
20 of 21 -- It pointed counsel for the states to 21 videos, to three
21 guides to asylum.

22 THE COURT: Right, and that's hopefully available, and
23 that would be a good way for people in the organizations trying
24 to help to view that without your organization having to actually
25 hand them something. They could just view it on the public

1 website.

2 MR. VOGEL: Precisely.

3 THE COURT: That would be the primary way that your
4 client communicates with people that might want services,
5 correct?

6 MR. VOGEL: In a nonconfidential, nonprivileged --

7 THE COURT: Not an attorney-client relationship.

8 MR. VOGEL: Exactly.

9 THE COURT: Okay. I read that as well.

10 MR. VOGEL: And we also pointed counsel as far as
11 Request 5 deals with documents relating to Law Lab's assessment
12 of the final rule, the Asylum Rule, and Law Lab files a lengthy,
13 a seven-page, single-spaced public comment, outlining its
14 perspective on the rule, what the rule would do and what the
15 impact of the rule would have on the asylum system.

16 But Law Lab maintains that apart from those things,
17 we're talking about materials that are covered by privilege, that
18 are covered by work product, and that are also covered by
19 counsel's ethical obligations.

20 And putting all of that stuff to one side, there is
21 also the burden question. And I think, you know, the burden for
22 Law Lab, you know, we're talking about a small, 30-person
23 nonprofit, and Law Lab operates across the country, and in order
24 for a small, 30-person nonprofit to do that, it frequently, just
25 about always has to collaborate with other organizations. So not

1 only are we talking about the need to identify and locate clients
2 who may be needed to be notified, we also have to deal with
3 addressing the questions of privilege and cocounsel relationships
4 with Law Lab's partners across the country, and we're talking
5 about a wide variety of programs.

6 These requests are seeking information going back to
7 2018, for the past five years, and just some of the things we
8 highlight in our briefing, Law Lab coordinated representation of
9 some of the first asylum seekers that were involved in the
10 Migrant Protection Protocols. It represented over a hundred
11 immigrant men detained in federal prison, and it runs -- it has
12 been running and runs Oregon's first universal immigration
13 representation program. So there's a wide variety of different
14 kinds of programs that these requests would implicate and that
15 would require a great amount of time and expense and constitute a
16 great burden.

17 The -- I mentioned the time, right. These are going
18 back to 2018, the requests. The rule is from 2022. The Notice
19 of Rulemaking was from 2021. And we're talking about an
20 incredible amount of time across a wide variety of programs, some
21 of which never operated here in Louisiana.

22 The Request Number 2 mentions by name Law Lab's Centers
23 of Excellence and its EPIC program. The EP in EPIC is for
24 El Paso. That operated just in El Paso. And the BorderX
25 detention project ceased operating under that name before the

1 rule was -- the proposed -- was even proposed. There was a
2 proposed rulemaking. And Law Lab has never conducted any
3 workshops in Florida or Louisiana either. So there are also
4 these questions of relevance that we bring up in our briefing.

5 And finally, I just wanted to highlight what I think
6 we've heard from everyone so far is that these requests go to the
7 very possibility of Law Lab's existence. Requiring Law Lab to
8 turn over information that is confidential, that is
9 attorney-client privileged, that is protected by work product, is
10 a threat to Law Lab's very existence because it means that people
11 will not be able to trust that Law Lab will be able to keep them
12 safe, and if people aren't going to be able to trust Law Lab,
13 they are not come to Law Lab and Law Lab will have to cease
14 operations.

15 THE COURT: Mr. Vogel, attorney-client work product
16 documents are not discoverable.

17 MR. VOGEL: That's right.

18 THE COURT: The only point, and I think you may be
19 overstating it a bit, but the only point that's relevant here is
20 essentially the identities in the context of immigration clients
21 are entitled to additional protection under attorney-client
22 privilege because of the lack of legal status of some of these
23 people, and that is an issue. But again, I'm deferring ruling on
24 any of the production of identities of your clients until later.

25 MR. VOGEL: I understand, and I appreciate that, but

1 I'm arguing like I think counsel is as well, that many of the
2 other documents that are requested under the other requests are
3 themselves protected by privilege, as we outlined in our briefing
4 or themselves protected by work product. We have produced --

5 THE COURT: If you are ordered eventually to produce
6 those, then you would put them on a privilege log.

7 MR. VOGEL: We have produced what we have that is not
8 already, and -- but like I said, there is this incredible burden.

9 THE COURT: All right. Thank you, Mr. Vogel.

10 MS. VOSBURGH: Your Honor, if I could address one
11 additional point.

12 THE COURT: Okay.

13 MS. VOSBURGH: Would you prefer me to do it from the
14 podium?

15 THE COURT: You can just stand up.

16 MS. VOSBURGH: Okay.

17 THE COURT: There's just one point.

18 MS. VOSBURGH: Of course. Yeah. And this is covered
19 in our briefing, but just to address something in the state's
20 response. With respect to Louisiana Advocates for Immigrants in
21 Detention, we are also raising First Amendment, really just
22 freedom in both federal and state statutory protections. La. AID
23 operates a temporary shelter which is core work out of a church
24 basement. It is intertwined inextricably with the work of the
25 Church for the Highlands. Both their leaders and volunteers are

1 called to do the work that they do, based on their sincerely held
2 religious beliefs. And so although La. AID has already stated to
3 the state -- and you know, I know we're not talking about Request
4 Number 1 right now, but certainly that's deeply concerning from a
5 religious freedom perspective.

6 They have already stated that on Request Number 2, 3,
7 4. They don't have anything other than what's publicly
8 available. That would be incredibly burdensome, but certainly
9 with respect to the subpoena as a whole, that this would also
10 infringe upon their religious freedoms, and that applies with
11 full force, both the federal RFRA to an order from this Court,
12 part of the federal judiciary branch and also under Louisiana
13 State RFRA, the Preservation of Religious Freedom Act. Thank
14 you, Your Honor.

15 THE COURT: Mr. St. John.

16 MR. ST. JOHN: Good morning, Your Honor, Scott St. John
17 for the plaintiff states. Let me start with the relevance. As
18 we told the Court in status conferences, we get the identity of
19 these folks, we can go to the state agencies, particularly,
20 public schools, is this child enrolled in your public school?
21 The answer is yes. That is an expense. That's an injury to the
22 state.

23 Why are we in this position? I don't know what tack
24 the federal government is going to take on standing. I have a
25 pretty good indicia based on their discovery requests and based

1 on the position they took in the Florida v. United States case,
2 but there's no 12(b)(1) motion for me to say, okay, the issue is
3 X and to focus discovery on that.

4 Discovery is my chance to pack my bag for trial.
5 That's where I pack my beans, my bullets, my butter. I don't get
6 to go to trial and say, oh, they actually care about this. I
7 have to do it all right now because I don't know. So we sought
8 information from the plaintiffs and from some private parties.

9 What do we know from those private parties? Mr. Rosaz
10 estimates his office represents, quote, around 600 applicants a
11 year, end quote, over the past five years in Louisiana. ISLA,
12 quote, served approximately 250 detained immigrant clients per
13 year from 2018 to 2020, and quote, the number of immigrant
14 clients is climbing. That's Docket 122-4, paragraph 8.

15 And ISLA serves thousands more through orientation
16 presentations and trainings. ISLA admits that it provides its
17 clients, quote, with information on the asylum rule, end quote.
18 Docket 122-4, paragraph 24.

19 Ms. Kelly of La. AID states that ice releases, quote, a
20 large volume of immigrants, end quote, into Louisiana, and that
21 nonprofits maintain programs to help them. And Ms. Kelly averred
22 that ICE discloses at least the names of at least some of those
23 immigrants to her in the form of electronic manifests. So they
24 have responsive information.

25 We also know that immigrants released in Louisiana are

1 unable to care for themselves and are directed to, quote, housing
2 programs and an immigrant shelter in Shreveport. Docket 122-3,
3 paragraph 14.

4 So what are the objections? I think the leading one
5 across all the subpoena responses is attorney-client privilege.
6 The existence of an attorney-client relationship is per se not
7 privileged. There's a narrow exception for the last-link
8 doctrine. That's not here. If you think about what someone has
9 to put on a privilege log, they have to prove the existence of
10 the attorney-client relationship.

11 THE COURT: What about the cases cited by the movants
12 with respect to immigration law in particular, that the
13 identities of clients, immigration firms are entitled to
14 additional protection? Have you had a chance to look at those
15 cases?

16 MR. ST. JOHN: I've looked at some of them, Your Honor.
17 I think the overall answer is that congress has provided a very
18 narrow statutory protection for T visa, U visa, and Violence
19 Against Women Act self-petitioners. Statutory is very narrow.
20 T and U are human trafficking, severe human trafficking victims
21 and victims/witnesses of crimes.

22 So congress has a told us where the sensitivity is.
23 And historically there was no protection for this. There is now
24 a regulation that we discussed this in the motion to compel the
25 federal government is really and only being viewed as a

1 processing regulation that puts the decisional authority of
2 whether to produce in the hands of the Attorney General or the
3 Secretary of Homeland Security, but it's not a substantive
4 privilege. So there is no --

5 THE COURT: On producing information on asylums?

6 MR. ST. JOHN: Yes.

7 THE COURT: Asylees?

8 MR. ST. JOHN: Yes. So there is no protection outside
9 of the narrow category that congress has specified, and it would
10 be a very odd reading to say that congress has said, okay, we're
11 going to protect --

12 THE COURT: That applies to what the government can do
13 with the information, not a third party. They have
14 understandable concerns about releasing the identities
15 specifically with respect to the attorneys, the movant attorneys
16 with respect to their clients. The clients come to them for a
17 reason.

18 MR. ST. JOHN: Their clients come to them for a reason,
19 but there's an inconsistency in their briefing. It's, on the one
20 hand, the state already has this, and on the other hand, the
21 world will end if the state gets this information. Which is it?
22 The reality is the state is the sovereign. The State of
23 Louisiana and State of Florida are the sovereigns over their
24 territory. For thousands of years, the sovereign is entitled to
25 know who is present in its territory. That's why Jesus was born

1 in Nazareth.

2 THE COURT: Yeah, but these organizations don't -- what
3 they don't have is any kind of -- they don't have a complete list
4 of that. They have very, very small pieces. I'm not even sure
5 how you chose to subpoena these particular organizations. That's
6 another question that I have, but they don't have anything that
7 would give -- shed any light onto the situation in Louisiana or
8 Florida as a whole. The government has that. The government
9 does have that.

10 MR. ST. JOHN: Absolutely, Your Honor. The federal
11 government should have a complete list of that. Okay. If I
12 can't get the complete list, this is that cross-purposes.

13 THE COURT: Yeah, let's move on. What do you want from
14 these organizations besides the identities of the individuals
15 they service?

16 MR. ST. JOHN: So working through the request, the
17 example, Request Document 122-2 page 50. Documents provided to
18 aliens regarding public benefits. Okay. If they don't have it,
19 there's no need for a motion to quash. They respond to the
20 subpoena. We performed an adequate search, and we don't have it.
21 That's the easy one.

22 Flip side, if they are handing this stuff out, the
23 analogy my colleague used in his brief, they are probably not
24 giving out War and Peace. If they are giving their client
25 something, they are giving it to them for a reason, and the Court

1 can infer that those aliens are using whatever benefits are being
2 advertised.

3 THE COURT: I don't want to get too much into this
4 without the defendants here, but is there a difference in the
5 benefits that asylum applicants would be entitled to versus those
6 who have been granted asylum?

7 MR. ST. JOHN: There is, and it's actually more
8 complicated than that, and it depends on the nationality of an
9 individual. For some benefits there's like a five-year waiting
10 rule. For some they're eligible upon asylum grant. For some, if
11 they're an applicant, I think it's from Haiti and Cuba, they are
12 instantly eligible, and there are a couple of other countries
13 like that. It's somewhat complicated. I know the Court doesn't
14 like this, but it depends is the actual answer.

15 Public school, if it's a child, Plyler v. Doe, we're
16 required to educate the child. So that's going to be universally
17 applicable. If I can identify children who are going to public
18 schools in Louisiana, it only takes one.

19 THE COURT: Well, the asylum, those waiting for asylum
20 determination would go to public schools as well.

21 MR. ST. JOHN: Yes, yes.

22 THE COURT: As those who have been granted asylum.

23 MR. ST. JOHN: Yes, sir.

24 THE COURT: And I'm talking about a specific case
25 because the reality is and the reason I have big question marks

1 about the standing in this case, it's different from the other
2 cases you cited, the one in Florida, Northern District of
3 Florida, for example, is different because here what we have is
4 the government asserting that one of the primary reasons for
5 this, for the IFR, was to expedite the removal statute, the
6 expedited removal statute, streamlined the removal of those who
7 are not granted asylum. That's one of the purposes. So what we
8 have -- and then, of course, another purpose is to go to the
9 adversarial proceeding, right, so that may affect the grant rate,
10 but we have two sides of the equation. We have one side being
11 that the government is asserting that actually the process is
12 streamlined under the expedited removal statute so that people
13 are not waiting in the system as long, and on the other hand, it
14 may affect the grant rate. It may be higher as a result of
15 several factors, among others, maybe the lack of an adversarial
16 system for certain asylum applicants, but that's why the standing
17 issue is complicated.

18 MR. ST. JOHN: Yes.

19 THE COURT: Because the net effect on the states to me
20 is not clear, not clear. And I'm not clear at all that, in fact,
21 there are more asylees getting state benefits than before the
22 IFR. I'm not clear about that. That's why I'm asking these --
23 That's why we're having this jurisdictional discovery.

24 What I don't think and what I don't think we're going
25 to get from any of the nonprofits or the Rozas Law Firm is any

1 kind of whole cloth answer to that question. I think the motion
2 to compel, we'll have to look at that, and I'm going to look at
3 that, but I don't -- I guess I don't -- I understand what you are
4 trying to do by getting names and running them through state
5 databases to figure out what benefits they are receiving, but
6 that still doesn't give us the big picture. That doesn't give us
7 the big picture of what the net effect to Louisiana and Florida
8 is.

9 MR. ST. JOHN: So Your Honor, one, by speeding the
10 process, you are increasing the eligibility. You're eliminating
11 that period of ineligibility because for some benefits, the
12 grantee is eligible, the applicant is not.

13 The rule does other things though. It increases
14 parole. Okay. That's going to put more of these folks on the
15 streets of Louisiana and Florida, and there's not really, I don't
16 think, any doubt about that.

17 THE COURT: Well, the government is not -- they are not
18 really detaining anybody unless there's a reason for it right now
19 anyway is my understanding.

20 MR. ST. JOHN: I think it's very opaque what they are
21 doing, and nobody knows other than the administration doesn't
22 want to detain people. How far they are pressing that, I don't
23 know.

24 A bigger picture item is the magnet theory, and the
25 government conceded that in February, and that's the reason for

1 the theory, the government's entire theory behind the February
2 Notice of Proposed Rulemaking about how to deal with the
3 expiration of Title 42 is that, when we change border policy, it
4 can act as a magnet and it's going to draw people here.

5 So if you have a process that is substantially easier,
6 substantially quicker, nonadversarial, that's going to draw
7 people. The government's effectively conceded that, and then you
8 have the testimony from Florida v. United States of the border
9 patrol chief, yeah, that's what everybody understands.

10 So what is one way we can prove standing? Okay.
11 Asylum applicants and grantees consume public benefits. Okay.
12 One dollar example of that. And then you zoom back out and say,
13 okay, is the asylum rule going to predictably increase that
14 consumption? And if it's acting as a magnet effect, as an
15 immigration magnet, the answer is pretty clearly, yes, it will
16 predictively increase the consumption based on big picture
17 statistics. That's New York v. Department of Commerce. You
18 know, the Court asked why did we select these folks.

19 THE COURT: So the big picture statistics would be the
20 number of illegal crossings?

21 MR. ST. JOHN: The predictable effect on the number of
22 illegal crossings, the predictable effect of an increased grant
23 rate.

24 THE COURT: Well, that's all information that should be
25 publicly available, right?

1 MR. ST. JOHN: What is not publicly available is the
2 very granular piece of information. Is there an asylee or an
3 asylum applicant -- and I don't mean to sound trite, but this is
4 the argument that the federal government has advanced, can I
5 prove that one of them, that one applicant or one asylee has
6 consumed public benefits. That's what was advanced in Florida v
7 The United States. The Court ultimately rejected that. That's
8 the federal government's position.

9 And I don't know the Court's views. I don't know this
10 Court's views. I've got to pack my bag now. This is discovery,
11 this is my chance to prove that up. So, yes, do I want to
12 identify at least one applicant, school child, and one grantee,
13 asylum grantee using public benefits, yes, because that proves
14 the underlying point that these folks do consume public benefits
15 and increase the cost on the state or impose a cost on the state,
16 and if the number increases, that cost is going to increase.

17 You asked why these folks, these particular subpoena
18 recipients. All have made public statements about the size of
19 their programs. Innovation Law Lab --

20 THE COURT: What do their views on what the IFR may or
21 may not do have to do with anything?

22 MR. ST. JOHN: They will presumably have used, whether
23 it makes it easy or not, how it's going to impact their business.
24 If they are expecting an increased number of clients, that's, you
25 know, the expert in the area is saying, Hey, this rule is

1 predicting, going to increase the number of my clients, that's
2 relevant to the impact of the rule.

3 THE COURT: Okay.

4 MR. ST. JOHN: We also know that at least some of these
5 folks, some of the recipients, Innovation Law Lab in particular
6 conducts workshops. They have a nationwide and international
7 presence, and in fact, Mr. Manning filed a declaration in East
8 Bay demanding a nationwide injunction on the specific theory that
9 their clients don't remain in one jurisdiction. So it's not just
10 what they are doing in Louisiana. We know they have presence in
11 Florida, but why do they have offices in Missouri and Georgia?
12 That was the East Bay declaration, because their clients moved
13 throughout the United States.

14 So whatever is happening on the border, whatever these
15 folks are being told on the border in these workshops impacts
16 Louisiana and Florida. So that's the answer for documents
17 regarding the rule, that's Request Number 3. Same request number
18 4. And what are you telling -- what are the applicants, are the
19 aliens being told? Are they being told how to access public
20 benefits? Are they being told what they need to say to establish
21 credible fear.

22 THE COURT: Law Lab, for one, I think pointed you to
23 some videos on their website, correct?

24 MR. ST. JOHN: I've looked at the videos on their
25 website. I also know that they have filed a very public

1 declaration saying they give workshops in Mexico and throughout
2 the southwest United States, but what's being said in those
3 workshops. And if the list of videos is complete, then there's
4 not a -- there's no privilege issue, there's nothing like that.
5 If it's not complete --

6 THE COURT: What's the relevance of that? You're going
7 to again say that what they are telling potential asylum
8 applicants will result in a predictable response?

9 MR. ST. JOHN: Yes. It also goes to the impact of the
10 rule. If you are eliminating -- The rule impact eliminates the
11 adversarial stage of the process, and based on the statistics,
12 and we've pointed you to DOJ statistics, the adversarial part of
13 it was a huge part of the filter. The nonadversarial was not
14 much of a filter at all.

15 The other part that the -- other thing that the rule
16 does is it eliminates the need for a separate application for
17 asylum. Okay. That was something on the order of a 40 percent
18 filter on credible fear to asylum grant. Folks would get the
19 credible fear determination -- aliens would get the credible fear
20 determination by the asylum officer, and then something like
21 40 percent of them never bothered to apply. They just wanted to
22 get in, get on parole, and be released into the interior of the
23 United States. That 40 percent filter is eliminated.

24 The last item is contracts with the federal government.
25 There can be no privilege on that. I mean, we don't have perfect

1 visibility into the contracts. I looked on spending.gov. Didn't
2 see any of their names. At the same time I was told by counsel
3 at the meet-and-confer that at least one of them receives federal
4 money.

5 If there are subcontracts, we may not have visibility
6 in that, but if they have contracts related to asylees or asylum
7 applicants in Louisiana and Florida, that's pretty good indicia
8 that these folks are here and causing a burden.

9 On the objections, there's a mechanical objection from
10 some of these, from I think Mr. McLindon and the Rozas firm.
11 That doesn't apply to ISLA or Law Lab. Law Lab's whole claim to
12 fame or part of its claim to fame is that it maintains a client
13 database, so it should be pretty trivial to search that.

14 ISLA tells us that it maintains a database. It's
15 searchable by, quote, type of immigration case, end quote, Docket
16 122-4, paragraph 27.

17 On the religion and association claims, I think those
18 are only raised by La. AID. The declaration, Ms. Kelly's
19 declaration is pretty interesting. It talks a lot about
20 volunteers. Talks a lot about Church of the Highlands, but it
21 doesn't talk a lot about La. AID, and if La. AID is indeed a
22 religious organization conducting religious activities, if it is
23 indeed conducting lobbying activities, that's a real problem if
24 it is being run by a VISTA program participant. It's probably a
25 violation of the Hatch Act. So the very carefully worded

1 declaration and the problem that it would pose suggests that it's
2 not actually a religious organization.

3 As far as the associational claims, nobody is asking
4 about their membership. We're asking about what do they give
5 nonmembers. It's no different than Rotary Club. Actually a
6 Rotary Club is a pretty good analogy for La. AID. Often
7 associated or sponsored by a church. Members tend to be fairly
8 religious, tend to be upright members of the community. Each
9 Rotary Club tends to have a couple of charities that it focuses
10 on and it sponsors. In my hometown, they take care of the city
11 park, but that does not transform that taking care of the city
12 park into a religious exercise.

13 Zooming back out to the big picture on the
14 confidentiality, I think we've touched on it in the brief. I
15 think we need to pull the curtains back and say, what's going on?
16 The puppet master here, or puppet masters, are Al Otro Lado suing
17 for constitutional rights. Same exact lawyers -- not same
18 individuals, same law firms that were in the Al Otro Lado case in
19 California a couple of years ago.

20 It cannot be the rule that when public interest law
21 firm is wanting open borders and advocating that, it gets access
22 to this confidential information and argues there shouldn't even
23 be a protective order on it.

24 But when a sovereign state comes into court for an
25 order compelling the federal executive to follow federal law,

1 whoa, that information is too sensitive. That cannot be the
2 rule. It's either sensitive or it's not. And the same public
3 interest law firms have argued successfully in the Southern
4 District of California that it's nonsensitive.

5 I hope I've answered your questions, Your Honor. Do
6 you have anything?

7 THE COURT: Yes, that's fine. What I'm concerned with
8 is the matter pending before me. I'm not concerned with what may
9 have happened between this public interest law firm in other
10 cases. And I'm not concerned with adjudicating any more than I
11 need to adjudicate to decide this issue before me. Okay.

12 MR. ST. JOHN: Understood.

13 THE COURT: Maybe others do things differently than I
14 do, but this is how I operate court.

15 MR. ST. JOHN: Understood, Your Honor.

16 THE COURT: All right. What we have here, and I think
17 my view is that, by filing a motion to compel, either yesterday
18 or this morning -- I got it this morning. The plaintiff states
19 acknowledge as much, and Mr. St. John acknowledged as much, but
20 what we do not have here is a demonstrated need at this point for
21 these third-party subpoenas.

22 Based on my understanding of Article III standing, at
23 this point I believe that sufficient documents are likely in the
24 possession of the plaintiff states and the federal defendants to
25 show Article III standing. Again, this is just my current

1 understanding. It could change based on argument or submissions
2 of the parties, but the plaintiffs must exhaust these discovery
3 tools between and among the parties before engaging in this type
4 of third-party discovery.

5 If party discovery is complete, particularly, with
6 respect to the motion to compel filed yesterday by the
7 plaintiffs, and the states show a need for the subpoena and
8 information and these subpoenas issued to these nonprofit
9 organizations and the Rozas Law Firm, the states can file a brief
10 listing the steps they have taken to obtain the needed
11 information from the parties to the lawsuit. I will then
12 determine if third-party discovery is necessary in this case, and
13 if I decide that it is, I will refer to the magistrate judge in
14 this case the subpoenas and the motions to quash, and she will
15 schedule a time to go through each of the discovery requests and
16 determine the discoverability of each category of documents. My
17 impression is that some of the documents are discoverable, but
18 the states have not shown a need for that information yet.

19 Therefore, it's the ruling of the Court that I defer
20 ruling on the motions to quash which are Documents 114 and 122,
21 as well as Document 1 in the related case, 23-cv-420. The Court
22 orders that compliance with the subpoenas issued by the plaintiff
23 states that are subject to the motions to quash are stayed
24 pending further order of the Court.

25 If within 60 days the plaintiff states file a motion to

1 reopen the motions to quash and enforce the subpoenas, they
2 should list specific documents which they feel they must obtain
3 from these nonparties and the necessity of that information for
4 standing so that we will have this -- these matters in a posture
5 where we can -- where Judge Whitehurst can go through each
6 category with the parties and make rulings on the
7 discoverability. Okay?

8 MR. ST. JOHN: Your Honor, if I may, a housekeeping
9 matter.

10 THE COURT: Yes.

11 MR. ST. JOHN: Given Your Honor's --

12 THE COURT: I'm going to schedule a status conference
13 with the defendants because we need to discuss what I just
14 talked -- what I talked about previously.

15 MR. ST. JOHN: Understood, Your Honor, and what I
16 wanted to alert the Court of is once we receive names, the state
17 agencies that we've talked to have said they would want a
18 subpoena for information. So just so the Court is aware of the
19 sequence of events. I know the Court is expressing concern about
20 third-party discovery. I just want to alert the Court to the
21 sequence of events the state would expect.

22 THE COURT: So your office would have to subpoena other
23 state agencies?

24 MR. ST. JOHN: Right. Mr. Landry is a separately
25 elected state official. He doesn't control agencies under the

1 control of Governor Edwards. We have worked together, but they
2 have indicated that they would want a subpoena for any
3 information in their possession.

4 THE COURT: Okay. Let's address that before we go down
5 that road. All right? Thank you, Mr. St. John.

6 Anything further? Court's in recess.

7 (Hearing concluded.)

8 * * * * *

9 **C E R T I F I C A T E**

10 I, Cathleen E. Marquardt, RMR, CRR, Federal Official Court
11 Reporter, do hereby certify this 19th day of April, 2023, that
12 the foregoing pages 1-39 constitute a true transcript of
13 proceedings had in the above-entitled matter.

14 /s/ Cathleen E. Marquardt
15 Federal Official Court Reporter
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